

DISTRICT OF COLUMBIA STATEHOOD CONSTITUTIONAL CONVENTION

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Friday, May 7, 1982

Washington, D.C.

The plenary session of the Convention was convened at 6:30 p.m., in the Convention Hall, 10th and E Streets, N.W., Washington, D.C., Mr. Charles I. Cassell, presiding.

PRESIDENT CASSELL: I call the convention to order.

May we have our moment of meditation, please.

(A moment of silence.)

Mr. Secretary, please read the roll.

(Whereupon, the Secretary conducted roll call.)

SECRETARY COOPER: There are 21 delegates that answered.

PRESIDENT CASSELL: There are 21 delegates. We do not have a quorum. I am certain there are two more people in the house.

Would someone be good enough to try to get us two people so that we can begin?

We are now ready to vote on the adoption of Section 4. If we can get ourselves a quorum, we could go ahead and finish with that.

We now have a quorum, and add to the rolls those people who have come in since we held the roll last. There being a quorum, we are now in session.

I have a couple of announcements to make, Delegates. The last two meetings we have been requested to conclude our meetings at 10:00 o'clock, inasmuch as the city government is no longer paying the difference between 10:00 o'clock and 11:00 o'clock, nor are they paying the difference between 2:00

o'clock and 5:00 o'clock on Saturday.

Miss Ellington has spoken to Mr. Dwight Crowt, who now advises us that until the end of the session, until May the 29th, we are entitled to meet until 5:00 o'clock on Saturdays and until 11:00 o'clock. This is not to encourage us to meet until 11:00 o'clock at night, but we are empowered to continue meeting until 11:00 o'clock on weekday nights and from 12:00 to 5:00 on Saturdays.

DELEGATE JOHNSON: Effective when?

PRESIDENT CASSELL: Effective tonight.

Now, let me indicate one other thing. You will recall that the Executive Committee of the Chairpersons last week met and made a recommendation to you on Saturday, on which you are to vote tomorrow, and that is regarding the extension of time that we have. You know, we have only adopted three Articles in the time that was set for adopting ten Articles. This is the end of the second week. By this time we should have completed the first reading.

We have not only adopted three Articles, but all of those committees that were scheduled to testify, or scheduled to make their reports, are not yet ready to make their reports because they haven't circulated their articles.

Let me again encourage all the committee chairs to

circulate your articles. We don't at this point know who is to read on Monday. By the end of today we must know the entire schedule, and I would hope every committee by the end of tonight has had his or her committee reports circulated.

We left off, I am told, last night with the completion of the items in Section No. 4, and that they were read, questions were answered, formal debate ensued, amendments were made, and each of the items, (a), (b), (c), (d), (e), and (f) were adopted. There is now an order to move for the adoption of Section 4, Procedures for Legislation Taking Effect, under Initiative and Referendum.

DELEGATE CORN: A point of information. Does that mean tomorrow we meet from 9:00 to 2:00 or from noon to 5:00?

PRESIDENT CASSELL: Tomorrow we have the option to meet from 12:00 to 5:00 or 9:00 to 2:00. We can decide that at a later time.

Yes, Delegate Johnson.

DELEGATE JOHNSON: Mr. President, I move the adoption of Section 4, Article on Initiative and Referendum, entitled "Procedures for Legislation Taking Effect".

A DELEGATE: Second.

PRESIDENT CASSELL: It has been moved and seconded that Section 4 of Initiative and Referendum be adopted.

Discussion?

DELEGATE CORN: I move the previous question.

PRESIDENT CASSELL: Those in favor of adopting Section 4, signify by saying "aye". (Chorus of ayes.)

Those opposed, abstained? The item, Section No. 4, is adopted.

Delegate Johnson.

DELEGATE JOHNSON: Fellow Delegates, I move the adoption of Section 5, Publicity, beginning with line 109 of the Article on Initiative and Referendum.

A DELEGATE: Second.

PRESIDENT CASSELL: It has been moved and seconded that Section No. 5 on Publicity be adopted. Any discussion?

Those in favor of adopting section 5 on Publicity --

DELEGATE ROTHSCILD: I have a discussion.

PRESIDENT CASSELL: Mr. Rothschild,

DELEGATE ROTHSCILD: Who decides on the content? I mean, what is the process by which that input is put together? That's what concerns me.

In other words, what was the thinking behind that?

DELEGATE JOHNSON: Delegate Rothschild, would you look at the rationale that is attached to each article?

DELEGATE ROTHSCILD: I have.

DELEGATE BRUNING: Yes. Normally it is put together by the state, and it usually allows proponents of the initiative and referendum to essentially state their position and then through various mechanisms allows people who are opposed to it either, as in some states by getting up signatures, to get essentially a position stated.

Essentially the pamphlet itself lists the articles, what it would change, and possibly in some cases an economic analysis, what would happen if it was passed or not passed. It would look something like this, what Washington State puts out, arguments both pro and con. So it is worked out essentially by the Secretary of State.

DELEGATE ROTHSCCHILD: I would like to make an amendment.

PRESIDENT CASSELL: I don't know what the process has been. Have your amendments been at this point? Okay.

Amendments are in order. Delegate Rothschild,

DELEGATE ROTHSCCHILD: I would like to say that the proponents of the initiative shall approve the arguments in favor of the initiatives. This is at the end, on line 114.

PRESIDENT CASSELL: Would you repeat that a little louder so the Secretary can hear you?

DELEGATE ROTHSCCHILD: The proponents of the initiative

shall be allowed -- excuse me -- shall approve of the arguments in favor of the initiative.

PRESIDENT CASSELL: Is there a second to that amendment?

DELEGATE CORN: Second.

PRESIDENT CASSELL: All right, It has been moved and seconded that the wording suggested by Delegate Rothschild be added to line 114.

Do you want to make a defense of that?

DELEGATE CORN: Could we hear it once more, please?

PRESIDENT CASSELL: Let's see if we can speed this up now. Delegate Rothschild, would you begin your argument, very quickly?

DELEGATE ROTHSCHILD: The reason for that is that I think it is very important that in the pamphlet that goes out the actual arguments that are in support of the initiative be ones that the proponents, the people who circulated the initiative, actually believe in,

It could be that a pamphlet would be put out that was intending really to defeat the initiative and not stating the true case in favor of the initiative. I just want to make sure that nothing goes out under the state officially that is not approved of, those people who did the work and created the

initiative and circulated it.

PRESENT CASSELL: Does anyone want to speak against that? Any others?

Delegate Bruning.

DELEGATE BRUNING: I think that would be covered well within the statutory language that put the initiative into effect. Certainly, as a legislative history, I would be willing to support that that is, indeed, the intent of what we expect the Legislature to do. Our assumption, I think, is that it is unnecessary.

PRESIDENT CASSELL: Any further discussion on the amendment?

All right. Those in favor of the amendment as stated, on line 114, by Delegate Rothschild, signify by saying "aye". (Chorus of ayes.) Those opposed? (Chorus of nays.) Abstained? The ayes have it.

Delegate Johnson?

DELEGATES: No, no.

PRESIDENT CASSELL: I'm sorry. The ayes are in favor. The Chair made a mistake. The nays have it.

Now, it seems --

DELEGATE THOMAS: Call for a division.

PRESIDENT CASSELL: Now, can we dispense with the

division -- it was obvious with the nays -- can we dispense with the division and especially roll call votes? As I have pointed out, it costs us something like \$35 or \$40 every time we have a roll call vote. If the outcome is obvious, then let us save the time and money.

DELEGATE GARNER: Call the question.

PRESIDENT CASSELL: All right. Those in favor, please signify by raising your hands?

A DELEGATE: Of the amendment?

PRESIDENT CASSELL: Those in favor of the amendment as stated by Delegate Rothschild.

A DELEGATE: Oh, no, we voted on it.

DELEGATE THOMAS: We're on the main motion now.

PRESIDENT CASSELL: I'm sorry. I thought somebody had called for a division. I asked for --

DELEGATE CORN: No, call the question.

PRESIDENT CASSELL: Very good. The original motion is on the floor now, and that is to adopt section 5, Publicity.

Those in favor signify by saying "aye". (Chorus of ayes.) Opposed? Abstained? Okay.

Now, Delegate Johnson,

DELEGATE JOHNSON: I move the adoption of section 6, Limit on Initiatives.

PRESIDENT CASSELL: Is there a second?

A DELEGATE: Second.

PRESIDENT CASSELL: It has been moved and seconded that section 6, Limit on Initiatives, be adopted. Is there discussion?

Delegate Kameny?

DELEGATE KAMENY: I would like to propose an amendment, if that's in order at this point,

Consistent with the amendment that I propose, and which was adopted, with respect to the limits on referenda, I would like to suggest -- to move adding at the end of the text on line 120 the words "...or as provided by law." Because some rights and protections will come from the Article on Rights, which is what is stated here, and others may come from legislation which in a proper fashion goes beyond the rights in the Constitution. This will protect those as well,

PRESIDENT CASSELL: Is there a second?

A DELEGATE: Second,

PRESIDENT CASSELL: It has been moved and seconded that added to line 120 -- "or as defined by law"?

DELEGATE KAMENY: "Provided" by law.

PRESIDENT CASSELL: "...or as provided by law."

Discussion? There being no discussion, those in favor

of the amendment signify by saying "aye". (Chorus of ayes.)
Those opposed, abstained? The amendment carries.

Delegate Johnson.

DELEGATE JOHNSON: We are now open for other amendments to this section, Mr. President, I mean, I see several hands.

PRESIDENT CASSELL: Delegate Barnes?

DELEGATE OULAHAN: Mr. President, I have been on my feet for three minutes. I was on my feet from the start. As everyone knows, I have a substitute here to move --

PRESIDENT CASSELL: I'm sorry, I didn't know that you had a substitute. I haven't been here for the last couple of nights.

DELEGATE OULAHAN: I have been on my feet, Mr. Chairman--

PRESIDENT CASSELL: Dear, sir, please continue. I really didn't mean to ignore you, Come forward.

DELEGATE OULAHAN: May I proceed to make my motion?

PRESIDENT CASSELL: You may, indeed.

DELEGATE BARNES: Mr. President, I also have an amendment.

PRESIDENT CASSELL: Okay, fine.

DELEGATE OULAHAN: Mr. Chairman, I am moving a sub-

stitute to section 6, which I have explained and I believe worked out with the members of the committee.

The substitute, which has been circulated, reads as follows: "No proposal or part thereof that relates to the appointment, qualifications, tenure, removal, or compensation of justices or judges, to the powers, jurisdiction, creation or abolition of courts, or any rules thereof, to the appropriation of any money other than new revenues created and provided therefore; or to the diminishment of the rights and protections of any person, as enumerated in Article ____ of this Constitution, or as provided by law, shall be the subject of an initiative."

A DELEGATE: Second,

DELEGATE OULAHAN: Mr. Chairman, the purpose -- Thank you.

PRESIDENT CASSELL: It has been moved and seconded. Is this a minority report or an amendment? This is an amendment,

Would you care to speak to it now?

DELEGATE OULAHAN: Very briefly, Mr. Chairman,

This is designed to bring the language of initiatives into line with section 4(c) for referenda. Secondly, the language of section 6 uses the word "citizens" with respect to

their civil rights. The word "citizens" is very limited. I have proposed the word "persons" be substituted. This would included, as protected by the Bill of Rights, not only individuals, i.e., citizens, but also legal entities. Corporations and unincorporated associations also have civil rights under the due process clause in the First Amendment.

I make this proposal, Mr. Chairman, even though, as I said before, I consider the procedure here for referenda and initiative as creating a fourth department of the government which I call the "Political Party Department". However, I believe that this provision does protect some of the problems which I foresee in this initiative and referenda procedure.

Thank you.

PRESIDENT CASSELL: Thank you,

Discussion? Delegate Corn?

DELEGATE CORN: I would like to make one amendment to this substitute motion, and that is, at the end of line 4, and again after the word "thereof" on line 6: "except as defined in Article _____", whatever the article on the judiciary is. Otherwise, you automatically create a conflict.

At the end of line 4, and after the word "thereof" on line 6, add, both times, "except as defined in Article..." whatever, the article that is on the judiciary. So that it

will read "No proposal or part thereof that relates to the appointment, qualifications, tenure, removal, or compensation of justices or judges, except as defined in Article ____ on the Judiciary, to the powers, jurisdiction, creation or abolition of courts, or any rules thereof, except as defined in the Article on the Judiciary."

The purpose of that is so that you do not create a conflict with what has already been passed.

DELEGATE BRUNING: Point of order. There has not been a second.

DELEGATE ROTHSCILD: Second.

PRESIDENT CASSELL: The chair will ask for that second from now on. That second is really not legal, but let's let it go.

The amendment is, after judges -- if I can read the Secretary's writing -- after the word "judges" on line 4, "except as defined in Article --" and I guess we will have to be specific. Somebody will have to find out what that article is. And on line 6, after "rules thereof, except as defined in Article ____." Why don't you look that up so we can --

DELEGATE CORN: Well, the article number won't be done until the Committee on Style and Drafting puts the Constitution in order. But you can just say here, for purposes

of this point, "except as defined in the Article on the Judiciary."

PRESIDENT CASSELL: Understood, understood.

Okay. Does everybody understand that? Discussion?
Delegate Bruning.

DELEGATE BRUNING: I know of no conflict right now between the Judiciary Article as we have adopted it in first reading and the language we have in here. So the language, in my mind, is redundant and unneeded.

PRESIDENT CASSELL: Delegate Schrag?

DELEGATE SCHRAG: I agree. I just wonder if Delegate Corn might describe the conflict because the article on the judiciary doesn't speak to initiatives. I don't see any conflict there.

DELEGATE CORN: May I speak to it, then?

PRESIDENT CASSELL: Any other discussion on that before we get -- Delegate Oulahan?

DELEGATE OULAHAN: Mr. Chairman, I speak in opposition to the amendment to the substitute. I think the language originally used by the Committee, which I have incorporated here, is fairly clear.

I don't understand what the amendment means and I think it is going to cause a lot of trouble in the future as to

interpretation.

DELEGATE CORN: May I speak to that?

PRESIDENT CASSELL: Delegate Barnes?

DELEGATE BARNES: I had an amendment to the original section.

PRESIDENT CASSELL: Delegate Corn.

DELEGATE CORN: I would like to speak to my own amendment.

I almost wonder if the people who are speaking against it are doing so because later on there will be a confusion in the Constitution --

PRESIDENT CASSELL: Please, let us not make judgments. Just respond to the question,

DELEGATE CORN: We speak in the Article on the Judiciary about tenure and removal of judges by an election for or against the judges, right? That can be interpreted as an initiative or referendum. It seems to me that by putting this in you are clarifying for certain that that process is in no way damaged or hurt by this disclaimer.

DELEGATE THOMAS: Call for the question, Mr. Chairman.

PRESIDENT CASSELL: The question has been called. Those in favor of cutting off debate, please signify by saying "aye", (Chorus of ayes.) Those opposed, abstained? Okay.

The question is on the floor. This is Delegate Oulahan's substitute proposal. If you vote for this, then this substitutes --

DELEGATE CORN: No, my amendment. This is my amendment on Delegate Oulahan's --

PRESIDENT CASSELL: I beg your pardon.

The amendment to add "except as defined in Article" so and so on lines 4 and 6. Those in favor of that amendment signify by saying "aye". (Chorus of ayes.) Those opposed? (Chorus of nays.) Abstain? The motion loses.

The original motion is now on the floor, and this is on the substitute motion by Delegate Oulahan.

Yes, Delegate Kameny.

DELEGATE KAMENY: I would like to propose as an amendment precisely the same amendment that I proposed before.

DELEGATES: Where is it?

DELEGATE JOHNSON: He included that in the language--

DELEGATE KAMENY: Thank you, I didn't realize that. If it's in there, then --

PRESIDENT CASSELL: The chair would like to know what was the amendment. I wasn't party to all that.

DELEGATE KAMENY: The same amendment that was carried earlier, to add at the end of the word Constitution and

before the semi colon, line 9, "or as provided by law,"

PRESIDENT CASSELL: All right. You did read that.

DELEGATE KAMENY: Which was approved and voted on earlier.

PRESIDENT CASSELL: All right. Is there further discussion on Delegate Oulahan's motion? Are you ready to vote?

All right. Those in favor of the substitute motion signify by saying "aye". (Chorus of ayes.) Opposed? Abstain? The substitute motion for section 6 carries,

Delegate Barnes?

DELEGATE BARNES: I have an amendment to the motion, but since we adopted the substitute motion, I can place it in.

It would be on line 7, and it would say, after "therefore, subject to an expiration period of four years."

PRESIDENT CASSELL: Where is line 7?

DELEGATE BARNES: Right here. It says, "To the appropriation of any money other than new revenues created and provided therefore, comma, subject to an expiration period of four years."

The reason I am doing this is the current Finance and Tax Article, we have provision for earmarked funds but we have a limit on this, a sunset provision,

What I am trying to do is get conformity between our article and this article. What this says is to establish appropriations based on revenue created, such as a tax, and we have --

PRESIDENT CASSELL: Let me interrupt you here. I am a bit confused as to what you're asking.

The substitute motion has passed. You can't substitute or amend the motion after it has been passed. The only way to change that now is to move to reconsider.

Now, I did not know that you wanted to be recognized to amend the substitute. Apparently that's what you wanted, right?

DELEGATE BARNES: Okay, I guess I'm a little confused. If the substitute had failed, I still would want to make the same amendment.

PRESIDENT CASSELL: If the substitute had failed, then you could make an amendment to the motion that was on the floor. That was the Committee's motion.

The substitute did pass. You can't amend it after it has been passed. You can amend it while it is being debated. It was your desire, apparently, to amend the substitute motion. What you should have done is move to amend the substitute motion, which would have been in order. I don't know how to

accommodate you now because the motion has been passed and it belongs to the body and it is now a part of our adoption.

Delegate Johnson,

DELEGATE JOHNSON: I now move the adoption of section 7, Local Exercise of Initiative and Referendum.

PRESENT CASSELL: Second? Is there a second?

A DELEGATE: Second,

PRESIDENT CASSELL: It has been moved and seconded that section 7 be adopted. Discussion?

Delegate Oulahan.

DELEGATE OULAHAN: Delegate Johnson, what is the purpose of section 7, because as I read it, we have no local government unit and I don't understand how a local government unit can farm out an initiative or referendum and establish something that is done by the individual voters.

DELEGATE BRUNING; It is based on the assumption that we will have local government units, or we could have local government units, i.e., boroughs, townships, whatever. Those jurisdictions may have to exercise the initiative and referenda if they had those certain powers, i.e., the power to pick up trash, for instance. You could have a referendum on whether the trash should be collected twice a week or five times a week, or never. Those types of things.

PRESIDENT CASSELL: Delegate Barnes.

DELEGATE BARNES: Would you say that local governments would be able to borrow under this provision?

DELEGATE BRUNING: It would be as provided by law. I would suspect that the state government would be very careful as to what powers it would or would not delegate to local jurisdictions. For instance, I don't see them giving away --

DELEGATE BARNES: Would they be able to raise funds under this provision?

DELEGATE BRUNING: It would be dependent, as provided by law. In other words, the state government sets the limitations on what the local government's powers are.

PRESIDENT CASSELL: Let me ask a question.

What is an elector of local governments as opposed to an elector of the state government?

DELEGATE BRUNING: It would just be in a small defined jurisdiction.

PRESIDENT CASSELL: So there could be an initiative within their jurisdiction?

DELEGATE BRUNING: Right.

PRESIDENT CASSELL: Which is limited to that jurisdiction?

DELEGATE BRUNING: A township, or Mt. Pleasant or --

PRESIDENT CASSELL: Okay. Delegate Schrag.

DELEGATE SCHRAG: Mr. President, there is a conflict between this section and a section that has been approved by the Local Government Committee to be included in the local government articles, which have not yet been distributed but which will be distributed soon.

The conflict is this: This wording implies, or could be read to imply, that there will necessarily be local governments. The Local Government Committee is recommending to you a plan under which citizens of an area of the state may petition for a charter, and the legislature will have the ultimate authority for deciding whether that charter is to be granted. So there may or may not be local governments, depending upon whether neighborhoods petition, and depending on whether those petitions are granted pursuant to standards established by the legislature. So that is a potential conflict.

The second potential conflict is that the local government committee is recommending to you that if charters are granted, local governments may be able to exercise powers.

But the constitutional provision that the local government committee is recommending to you will say there are three powers that may not be exercised by local governments:

the power to tax, to have a local tax; the power to zone, to have local zoning regulations that aren't approved by the state; and the power to pass legislation, local legislation that would only apply within a small area.

Now, these few words at the end, "as provided by law", is fairly inconsistent with the prohibition that the Local Government Committee is recommending to you, that local areas not be allowed to legislate for themselves. This would apparently be in conflict with that because an initiative is a type of legislation.

To leave this issue open so that we can discuss it in the context of the local governments article, I propose the following amendment:

Leave line 122 as is. Change 123 to read "...of any local governments" rather than "of local governments", and then, instead of "as provided by law", substitute the following words: "...any local governments that are established, to the extent permitted by this Constitution and the law."

Now, that means that if, either now or at some later time, the Constitution says that local governments may legislate, then they may legislate by initiative or by any other way the Constitution provides. If the Constitution bars

local legislation of this kind, then that bar would apply to this section until such time as the Constitution is amended to permit local governments to legislate. In any event, this will not foreclose the debate on that when the local government article comes up. This merely says that you find out what local governments can do when you read the article on local government and our committee will present the full planoply of arguments on the issue of local legislation at that time.

PRESIDENT CASSELL: Have you made a motion?

DELEGATE SCHRAG: Yes.

PRESIDENT CASSELL: Okay. Does the motion receive a second?

A DELEGATE: Second.

PRESIDENT CASSELL: Okay. Delegate Graham, and then I would like to hear from Delegate Nahikian.

DELEGATE GRAHAM: Mr. President, and members of this Convention. I am very happy that I came from a state, and I thought it was very conservative when I was there, from North Carolina. But in North Carolina we had opportunities to do many things, and this line 122 and 123 certainly describe that.

When I was in the area of Quenton County and Cypress Creek Township, there were certain laws that we had for our issues different from another section of North Carolina.

What Delegate Schrag is suggesting is that the power would be with the legislators. The power should be with the people and the people should send those legislators to the state government who will, in turn, see that they exercise the right that they should have in the counties and townships.

I certainly am for local government as well as for state government, but it seems to me that some people are thinking about giving the power to the legislatures and not having it in the community with the people. If this goes through, what he is saying, it means that we are going way back from where we have come.

We need to show that we are moving forward, and regardless of what anybody suggests to us, continue to move forward, rather than take a backward step. I believe in the power of the local people and then on to the state, and then to the federal government. If we do something less than that, then we will be an antique and not working to the very fullest for the rest of the people who are here.

PRESIDENT CASSELL: Delegate Nahikian.

Why don't you just come to the front. I have to make an announcement. As you may have noticed, Delegate Lockridge left us a short time ago. Her husband, Mr. Calvin Lockridge, has just had a stroke and she has had to leave. I

thought you should know that. He is on his way to the hospital now.

Delegate Nahikian.

DELEGATE NAHIKIAN: Thank you.

Delegate Schrag is correct in his reporting to you that at this point in time the local government article that will be reported out at this point in time does not allow local government to have the authority to tax or zone land or enact legislation. Consequently, at this point I would support Schrag's amended language in section 7.

In all due respect, particularly from the comments of Delegate Graham, I really do look forward to some very intense and well-educated debate when the local government article does come before the body, because many of us have struggled over this issue of how local government fits into our new state at least, and I think there is going to be some good and healthy debate.

At this point I do think the amendment that Schrag has proposed would not preclude granting additional authorities when we get to the local government article.

There is one footnote that I would like to make clear--and I checked it in a discussion with Mr. Schrag--over the language that he has proposed. That is, that this language,

even if the local government article is passed as we are proposing it, would not deny local governments the right to organize together to put an initiative or referendum on the state-wide ballot. I think that's a very important thing to make clear, that as the language in section 7 would not deny local governments the ability to organize together as they are now denied through Advisory Neighborhood Commissions, to put initiatives and referenda on the ballot.

Thank you.

PRESIDENT CASSELL: Okay. Delegate Coates, and then Delegate Shelton.

DELEGATE COATES: Thank you, Mr. President. I certainly appreciate the report from the Suffrage Committee. What I now say is not in any way a condition of that appreciation.

But if we adopt the recommendation of the committee at this point, it would appear we would allow widely dissimilar vital and necessary public services. If, for example, a local government decided not, by referenda, to provide funding therefore, so that we could, in effect, cop out in the new state, with persons residing in one of the other subdivisions not having the benefit of an equal distribution of essential public services. That, I submit, is a totally un-

desirable outcome which we might have arise if this provision is adopted and incorporated in our Constitution.

Therefore, again in the sense of Delegate Nahikian's comments, I urge adoption of the Schrag amendment.

PRESIDENT CASSELL: All right. Delegate Shelton.

DELEGATE SHELTON: I pass.

PRESIDENT CASSELL: Okay. Anyone else?

The motion on the floor is to -- Delegate Bruning.

DELEGATE BRUNING: Although I am probably content with the language as it is, I feel the Schrag language does no harm to the basic principle, and essentially, despite and I think hopefully a very good discussion that we're going to have will come up in the local government section, which is probably where it should be, and I look forward to that because I think it is a multi-sided issue. I am for local government.

PRESIDENT CASSELL: Yes, Delegate Corn.

DELEGATE CORN: I would like to speak against the Schrag amendment.

First of all, no matter what kind of local government is established, if any is established, there is no reason to deny them an initiative and referendum. If one community decides, for instance, that street lighting is not

a necessary public service, or trash collection is not a necessary public service, that is not to say they should not be entitled to do it their way.

In Massachusetts, every township and every county and every city does it differently. Some cities and some counties, they have public trash collection, and in others people take their trash to the public dump to save on taxes. If a certain neighborhood wanted to do it like that to save on their taxes, there is no reason to not allow them that.

I would say this is a very good section as it has been written by the committee. It is one of the few things I agree with the committee on.

PRESIDENT CASSELL: Thank you. I think you have made your point now.

The motion reads this way. On line 123, insert the word "any" preceding "local governments", and strike "as provided by law" while substituting this word: "that are established to the extent permitted by the Constitution and the laws."

Those in favor of that motion, of that amended motion, signify by saying aye. (Chorus of ayes.) Opposed? (Chorus of nays.) Abstained.

Let me see the hands of those people who favor

Schrag's motion. (Show of hands.)

I guess the "ayes" did have it, didn't they? Please keep your hands up now that we're calling for that vote.

DELEGATE COOPER: Sixteen.

PRESIDENT CASSELL: Those opposed? (Show of hands.)

DELEGATE COOPER: Seven.

PRESIDENT CASSELL: All right. The motion carries. We are back to the original motion, as amended, now.

DELEGATE GARNER: Call the question.

PRESIDENT CASSELL: Okay, the question has been called. Those in favor of cutting off debate, signify by saying aye. (Chorus of ayes.) Opposed? Abstained? Okay.

Those in favor of section 7 as amended, signify by saying aye. (Chorus of ayes.) Opposed? Abstained?

Delegate Johnson.

DELEGATE JOHNSON: I move the adoption of section 8, entitled Enabling Legislation.

DELEGATE THOMAS: Second.

PRESIDENT CASSELL: It has been moved and seconded that section 8 be adopted. Discussion? There being no discussion, those in favor of adopting section 8 signify by saying aye. (Chorus of ayes.) Opposed, nays? Abstains? Okay.

Delegate Johnson.

DELEGATE JOHNSON: Mr. President, I move now the adoption of article on Initiative and Referendum, as amended.

DELEGATES: Second.

PRESIDENT CASSELL: It has been moved and seconded that the article on Initiative and Referendum, as amended, be adopted.

Those in favor signify by saying aye. (Chorus of ayes.) Opposed? (One nay.) Abstain? (One abstention.) Okay.

Delegate Johnson.

DELEGATE JOHNSON: Fellow delegates, we are now on the Article on Recall of State Officials. This is the fourth of our five articles that has been drafted for your consideration by the committee. With your permission, I will read the article.

PRESIDENT CASSELL: Please carry on.

DELEGATE JOHNSON: Section 1, definition. Recall is a process by which the qualified voters of the State of _____ may remove or retain an elected state official.

Section 2. The petition process and time limits.

The petition process for recall which involves acquiring, filing, and certification of the required number of signatures is to be conducted through the Office of the Secretary of State. A maximum of ninety days is allotted for the

collection of signatures.

Section 3. The Petition Statement.

A concise statement, alleging the reasons for recall, that will be placed on the petition, shall be determined by the petitioners in cooperation with the Secretary of State.

Section 4. Petition Signature Requirements.

The number of signatures required for the petition to be certified shall be 25 percent of the total number of all votes cast in the most recent election for the position in question. In the case of a state-wide position, the same percentage (25 percent) must be obtained from at least two-thirds (66 percent) of the legislative districts represented by that position.

Section 5. Initiation of Recall.

Recall cannot be initiated within the first six months of the term of an elected official, or the last 12 months of the term of an elected official, or within six months after a recall election for that official.

Section 6. time of Recall Election.

A recall election shall be held no less than 60 days nor more than 120 days after certification of the signed petitions.

Section 7. Votes Required for Recall. A simple

majority vote removes the official from office.

Section 8. Reimbursement.

Within limits set by legislature, recall expenses incurred by the official, if retained, shall be paid by the State.

Section 9. Filling a Recall Vacancy.

When an official is recalled, the vacancy shall be filled by a special election held no more than 90 days after the recall certification or at the next election if it occurs in less than 150 days.

Section 10. Recall and Local Government.

Local governments within the state shall have the power to provide for recall of their elected officials.

Section 11. Enabling Legislation.

This article is self executing, but enabling legislation may be enacted by the legislature as required.

PRESIDENT CASSELL: I understand you have been having approximately 10 minutes. Have you been setting the limit?

DELEGATE JOHNSON: Yes, ten minutes.

PRESIDENT CASSELL: All right. Let's see if we can hold to that. Any questions?

Delegate Corn and Delegate Jordan.

DELEGATE CORN: I have a brief question on Section 11, and on Section 4.

On 11--and I guess I wondered about this on the last one, too--this is very self-explanatory and it is very clear what you are trying to do, so why do you say "but enabling legislation may be enacted by the legislature as required"? Supposing that legislation changes what is in here--

DELEGATE JOHNSON: Enabling modifies --

DELEGATE CORN: -- what's in there.

DELEGATE JOHNSON: No. Enabling explains it. Enabling means, in other words --

DELEGATE CORN: I know what it means.

DELEGATE JOHNSON: -- no other legislation --

DELEGATE CORN: -- can be contradicted to what's in here.

DELEGATE JOHNSON: No other legislation is needed in order for this to be in effect. However, enabling legislation may be enacted as required.

DELEGATE CORN: Could I ask you something? What did you have in mind as enabling legislation that isn't already set forth very clearly in here?

DELEGATE JOHNSON: For example, the procedures actually (inaudible)

DELEGATE CORN: Can I ask you one more thing?

On section 4, why do you say 25 percent of the total number of all votes cast in the most recent election?

Supposing, for instance, five people are running for that position. The one who wins with the highest gets 25 percent of all the votes, and 75 percent of all the other votes are split between the four, the other four people running for that position on the legislature. It wouldn't be very difficult, after six months, to line up 25 percent of the people to say "we want to recall that guy."

Why did you set such a low limit instead of a higher limit, like 35 percent?

DELEGATE B. MOORE: Well, the 25 percent is --

DELEGATE CORN: I'm talking about for a legislator, not for the Governor or -- I'm talking about individuals --

DELEGATE B. MOORE: This is of the total votes cast for that position in the previous election.

DELEGATE CORN: Twenty-five percent is pretty low.

DELEGATE B. MOORE: Twenty-five percent is one of the highest in the country. There are about 14 to 16 states have have recall, and I don't recall -- there is maybe one other state that has maybe 30 or 40 percent.

DELEGATE CORN: Which state was that?

DELEGATE B. MOORE: Wyoming. California has a 12 percent recall. There are others with 15 percent. But the average is about 25 percent, of those that have it.

PRESIDENT CASSELL: Okay. That question has been responded to.

Any further questions?

DELEGATE CORN: May I say --

PRESIDENT CASSELL: Delegate Jordan.

DELEGATE JORDAN: I have a couple of questions.

I note that under the section on Suffrage and under the section on Apportionment you don't use any definitions of terms. Under Initiative and Referendum, you define the terms. Under recall you define recall.

I want to know why that wasn't followed through consistently and why is there a need to define what recall is.

The second thing is, why is the recall limited to state officer holders only?

PRESIDENT CASSELL: Why don't we take those one at a time now. The first one?

DELEGATE B. MOORE: The first one, I think here this reflects--my fellow committee members can respond too--but I think it just reflects the style of each individual committee member and his or her contribution to the whole. We took each

section separately and basically decided on the substance of the section and the styles were a little bit different. Some defined some terms and some didn't.

In the second question --

DELEGATE JOHNSON: Also, Delegate Jordan, I think that in some instances we felt that -- what Delegate Brian Moore said is true, but also we felt that some items were really self-explanatory and therefore didn't --

DELEGATE JORDAN: Would recall be one of those items

DELEGATE JOHNSON: Perhaps not.

The answer to your second question is we did, over in section 10 --

DELEGATE JORDAN: Section 10. What's the difference if we read it says "they shall have the power to provide for". That makes it discretionary. There is no discretion when it comes to recall of state officials, and discretion comes with what we call local officials.

I'm just saying, why make that distinction?

DELEGATE GARNER: Again, we weren't clear with the differences between things like initiatives and referendum, and we thought it was important to make those differences clear. Again, the problem with local government, as we had under Initiative and Referendum, we wanted to make it clear

that that should be there, but not knowing the structure of local government, we worded it in this way to try and authorize if that's what local governments wanted. That was our intent. You may wish to change that.

DELEGATE JORDAN: You see, I'm just saying that if you make it very clear in the last article you did, you made it very clear what the intent was of local government. We spoke to it and it is clearly stated in the Constitution, or in this article.

Now we are kind of hedging on it and I'm just wondering--You know, here we --

DELEGATE JOHNSON: Do you want to make an amendment?

DELEGATE JORDAN: Okay, because I --

DELEGATE B. MOORE: Let me respond to that one.

This area caused quite a bit of discussion in our committee, and actually it initially said that they were required to have recall, local governments. Then the committee compromised and decided that no, we will not force the local entities. That's their right to decide whether they want recall or not. We therefore put in the phrase "shall" if they so choose.

DELEGATE JOHNSON: I suggest, Delegate Jordan, that you read the rationale on that.

PRESIDENT CASSELL: May we go to the next question now? Delegate Love, Moore, and Rothschild.

DELEGATE LOVE: I have a couple of questions. The first question is, if we decide to have our legislator sit for two years, and also the House of Representatives will be in office for two years, it appears it will be virtually impossible to recall them; is that true?

DELEGATE B. MOORE: Probably so, because the first six months you cannot recall, then it takes basically eight months to put the system into motion before it is completed. So that would be 14 months of a person's 24-month term. You could recall once, but that would be it.

DELEGATE LOVE: I hope we will do something, because we know that we will have Representatives that will only be elected for two years regardless of anybody else.

DELEGATE B. MOORE: Actually, this is a compromise because under the Home Rule charter right now you must wait one full year before you can begin the process.

DELEGATE LOVE: But it is clear we won't have two-year officials. The House of Representatives sits every two years --

PRESIDENT CASSELL: Remember, now, this is not debate time. This is just an explanation of the rationale for

the --

DELEGATE GARNER: The Committee was assuming that all state officials and legislators would be elected for four-year terms. If that is not a correct assumption, then what you say is correct. However, you may not have a recall for Members of Congress. That is a federal office and it is illegal for states to provide for recall of federal officials.

PRESIDENT CASSELL: Delegate Moore.

DELEGATE LOVE: I have another question.

Could you explain to us why -- I can understand the 90 day limit to collect signatures for a referendum. I don't understand why, especially since you require 25 percent of the votes, why you should have a 90-day time limit for collecting signatures for recalls as opposed to 180 days which is provided for the referendum.

DELEGATE B. MOORE: We just thought 90 days was a reasonable amount. Of course, at that time we did not have -- Can you help me out?

DELEGATE GARNER: You are correct. We have made it difficult to recall officials, and we have also made the period short because we didn't want charges to be alleged against an official and outstanding for a long period of time without resolution. If you make it 180 days, you can charge

an official with something, put it into the press, make a lot of hoopla, without ever getting a single signature. That was the rationale for making the period relatively short.

The connected rationale for having 25 percent was debated in the committee and we adopted 25 percent, which has been the provision for a number of states. I don't know whether they also have a short period of time. But that was our rationale.

PRESIDENT CASSELL: Okay. Delegate Moore.

DELEGATE T. MOORE: I have reference to section 10, Recall and Local Government.

I question if the local government (inaudible) And the other question is on lines 47 and 46, I am questioning whether you can get a majority vote to recall when previously you talked about initiatives. I was wondering why it is 50 percent for the recall that is required.

DELEGATE B. MOORE: I will answer the second question first. We have a majority vote on the part of the populace with regard to initiative and referendum. It is the same with regard to a recall. All you need is a majority vote in any of those three areas. The three-quarters vote is applicable to the legislature prior to submitting the initiative or the referendum to the people.

PRESIDENT CASSELL: Okay. Delegate Rothschild.

DELEGATE B. MOORE: His first question was not --
Would you repeat your first question again?

DELEGATE T. MOORE: On 46 and 47, on the power to the local governments. The question is relative to the previous question that we have. The local government doesn't really have any powers yet. I'm just wondering why --

DELEGATE B. MOORE: Well, we made an assumption there would be a local government, all right? As I stated earlier, there was a lot of controversy on this. It was initially submitted that we should require the local entity to have a recall provision, but there were some members of the committee who felt that that shouldn't be mandated and should be left up to the local jurisdictions to decide on whether they wanted to implement such a policy.

The idea was, I guess, to encourage local entities to take that into consideration, since this body possibly would approve.

PRESIDENT CASSELL: All right, Delegate Rothschild.

DELEGATE ROTHSCCHILD: Three questions.

One, section 5 -- no, excuse me. Section 9. When an official is recalled before the 90 day vacancy, how does this interrelate with the executive right to fulfill vacancies?

Is there any consideration here? Is there any problem or overlap? I mean, can the Governor go in and appoint somebody in that position?

DELEGATE B. MOORE: It is only done after the vote by the populace occurs and the legislature is defeated. Then there is a provision where we provide between 60 and up to 120 days for a special election, unless there is going to be an election coming up within 150 days,

DELEGATE ROTHSCHILD: Can the Governor appoint somebody --

DELEGATE B. MOORE: We have made no provision, I don't believe so. We did not speak to that, but I believe it was our assumption that the Governor would not fill it, and it would be filled by election.

We talked about the fact that people who recall an official would be without a legislator or a governor for that period. That is one of the decisions they would have to make in voting to recall. If they wanted a legislator, no matter how bad, they would have to keep him. If they wanted to be without one for 90 days, they would have to vote against him or her.

DELEGATE ROTHSCHILD: Okay. Two other questions that relate to section 4. On this 25 percent, what is the history

of the other states that use that percentage, the number of days, how many recalls do they have, and a question that is interrelated to that, did you just consider not having any recall at all, since the recall that you have seems to be very difficult to -- Did you ever consider just dropping the recall since what we have --

DELEGATE B. MOORE: We did not make any assumption there, so therefore we discussed the idea of whether we should have recall or not.

We felt it would be very important to give the power to the people to decide, if a legislator bothers them enough, that they felt he or she was not representing them, that they should have the right to recall the legislator. So we did agree with that.

Secondly, on the history of states and their experiences with recall and how many they had, we did not bring that into our discussion in the committee. I don't know if any of our other committee members are familiar with that.

[Delegate Harris assumed the chair.]

DELEGATE HARRIS: It seems to me we have gone beyond the question period, the time. Let's entertain two more and then move to adopt the section.

A DELEGATE: Second.

DELEGATE COATES: I was to follow Delegate Rothschild on the President's list.

DELEGATE HARRIS: It was, and also we were proceeding by having each delegate during the question and answer period ask only two questions. So we are now down to one because we're out of time.

DELEGATE NAHIKIAN: Move to extend the time.

A DELEGATE: Second.

DELEGATE HARRIS: It has been moved and seconded that we extend the time, but it was not specific as to what the time should be extended to.

DELEGATE NAHIKIAN: I just don't want to get cut off from asking a question like I did last night,

DELEGATE HARRIS: I don't know what happened last night. This is another night. After Mr. Coates, our last speaker will be Miss Nahikian and maybe we can get through this. We're not going to extend the time. Let's just talk and end it.

DELEGATE COATES: May I inquire of the committee as to the potential for conflict of interest as is seen in line 12 of section 1 and in line 19 of section 3, whereby in the first instance the Secretary of State is to handle those matters involving petitions, and in the second instance he is

required by constitutional provision to cooperate with respect thereto.

The Secretary of State is himself an elected official and might well be the subject of recall. What was the rationale here with respect to --

DELEGATE JOHNSON: What were those sections and what lines?

DELEGATE COATES: Line 19 of section 3, where the specific language is --

DELEGATE JOHNSON: I got it.

DELEGATE B. MOORE: In the rationale, as I explained, the official petition process is to be handled through the Secretary of State in cooperation with the State Attorney General's office. That is regarding legal matters.

DELEGATE COATES: Okay. I don't want to debate you, but obviously, it appears to me, that the Secretary of State himself may be the subject of recall.

DELEGATE B. MOORE: That is correct.

DELEGATE COATES: And he, by your provision, is to cooperate --

DELEGATE B. MOORE: I recall during our discussion--

DELEGATE COATES: That is a possible conflict of interest and I am wonder what your response is.

DELEGATE GARNER: You are correct. Our assumption, when we drafted this section, was the assumption that the Executive Committee report would be adopted as drafted. At that point it had an Attorney General and a Secretary of State independent of the Governor, elected independent of the Governor. That has all been changed and this section may not necessarily be as appropriate as we had originally considered. That was our rationale, however.

The idea was an independent, clerk-like office.

DELEGATE COATES: The second question is indicated at lines 38 and 39 in section 8, and that is the provision that "within limits set by legislature, recall expenses incurred by the official, if retained, shall be paid by the State." I have a two-part question on your rationale there.

An elected official has to bear the expenses of being elected initially. Why do you provide for the State to pay his expenses if he is subjected to a recall? And secondly, why is it only if he is retained that you provide for the State to bear the expenses?

DELEGATE B. MOORE: Number one, an opposition party could harrass a legislator who wins and basically deplete his funds by constantly recalling him during his term. We felt this was one way to avoid that situation, to enable the

legislature to make up his expenditures.

If he does win by a vote of the people, then the state would cover those expenses. Why should he be subject to a minority group of people who are just trying to basically harrass the fellow but never can get him out of office. He shouldn't be subject to paying all those expenses, or she.

DELEGATE HARRIS: Okay, let's move on.

Delegate Nahikian.

DELEGATE GARNER: Excuse me, just one final word.

DELEGATE HARRIS: Was it answered to your satisfaction?

DELEGATE COATES: Was it satisfactory? Yes, it was. I understand the --

DELEGATE GARNER: That provision is in several states' constitutions.

DELEGATE HARRIS: Okay. Miss Nahikian.

DELEGATE NAHIKIAN: I have two questions. One is, what kind of research did the committee conduct that showed you that it was necessary to make it very difficult to recall officials? Were there instances of abuse? I mean, what kinds of stuff did you look at? I am bothered by the fact that you have given 90 days to get 25 percent of the electors of a former election. That's almost as impossible as writing a

constitution in 90 days.

DELEGATE B. MOORE: Well, in the first two or three drafts prior to our final vote we had 10 percent, the figure of 10 percent. It was only in our last meeting that the figure changed and it was based on the idea that the majority of the committee members felt there should be a trust in our legislators, and one way to demonstrate that trust was to make it more difficult to eliminate them from the office that they hold.

DELEGATE GRAHAM: May I add that we had hoped that when a legislator comes before the people to be elected, that the people will have confidence in that person and will research much about that person before that person is elected.

Then when the person gets in, we hope that the tough level will continue and that they will not be ready to recall them on some frivolous matter.

DELEGATE NAHIKIAN: Let me ask one other question.

No where in this title do you lay out any parameters that form a basis for recall. That is one of the things that bothers me a little bit, that on the one hand you make it almost impossible to accomplish--I mean, I think we may as well not have a recall provision if it's going to be 25 percent in 90 days.

But, on the other hand, your exception is very vague. I mean, it could be for any reason. "We don't like him because he dyes his hair; we don't like her because she got a divorce." It could be for any reason.

DELEGATE HARRIS: Delegate Thomas asked me if he could respond.

DELEGATE THOMAS: I will yield.

DELEGATE HARRIS: Okay, Delegate Jones.

DELEGATE JONES: You know, the problem of not liking somebody because he dyes his hair is not going to cause solid citizens who vote to sign a petition for recall. The other problem with this is that no other legislative district can recall your representatives. And in legislative districts as small as we're going to have, the population in that district can get 25 percent of the vote in that district from the last gubernatorial election. Therefore, 25 percent is neither unreasonable nor is it impossible.

The other problem is that everybody in here knows that you could not just recall somebody for a frivolous kind of thing. You have to charge the person with something very serious that would almost constitute a felony in order for you to talk about recall. Therefore, I see nothing unreasonable about this provision.

DELEGATE HARRIS: Thank you, Delegate Jones.

Delegate Kameny for our last question.

DELEGATE KAMENY: Madam Chair, I continue to be troubled, as Delegate Coates was, by the phrase "if retained" on line 39.

Was it your intention that an officeholder subjected to recall is going to have to make a decision not on the basis of the merits of his position as he feels it, but on the likelihood that if he happens to lose he may be subjected to bankruptcy to decide whether to run or not. Why really is that phrase there, other than there are other states that have it? We have our wisdom. Let's not look at their own wisdom.

DELEGATE B. MOORE: You notice the first four or five words of line 38, "within limits set by legislature--"

DELEGATE KAMENY: That's not what I'm worried about. I mean, if he is not retained, he has to pay his own expenses and they will go into bankruptcy, which is a gamble that no legislator, no officerholder, should be put to, to decide whether to fight the recall on its merits.

[President Cassell resumed the Chair.]

PRESIDENT CASSELL: Delegate Kameny--

DELEGATE KAMENY: I want to know what the reason was.

PRESIDENT CASSELL: I have to interrupt you, Delegate

Kameny. We haven't gotten to the formal debate now, right?

DELEGATE KAMENY: I am asking their reasons for doing it this way.

PRESIDENT CASSELL: Yes, but you are debating with him and you're challenging him, and you're almost threatening him, right?

DELEGATE KAMENY: No, they haven't provided me with an answer as to what their reasoning was.

PRESIDENT CASSELL: You know, if you're not satisfied with his answer, then we have to move on. We'll give you a chance to make your points during debate.

Are there any more questions on this section. Okay, Harry, and then we're going to close. We are way past our ten minutes.

DELEGATE THOMAS: Fellow delegates, I want to say I am very happy to be standing here with Brother Brian. We have agreed in the committee to what he is doing and are asking him to defend it. So any time we get Brother Brian Moore on our side, I would vote to support his proposals.

(Applause.)

PRESIDENT CASSELL: Delegate Johnson.

DELEGATE JOHNSON: I move the adoption of section 1 on Recall of State Officials.

A DELEGATE: Second.

PRESIDENT CASSELL: It has been moved and seconded that section 1 on Recall of State Officials be accepted.

Delegate Jordan?

DELEGATE JORDAN: Yes, Mr. Chairman, I would like to offer an amendment, to insert after the word "state", on line 5, to add "or local government".

A DELEGATE: Second.

PRESIDENT CASSELL: Okay. It has been moved and seconded that on line 5, after the word "state", be inserted "or local government". I guess what you mean is "the state of so and so or local government"?

DELEGATE JOHNSON: No, he is speaking of line 6, down at the end of line 6. It is "elected state", and he is amending to add "or local government official."

PRESIDENT CASSELL: All right,

DELEGATE JORDAN: Yes, or local government official.

PRESIDENT CASSELL: Do you want to speak to your motion?

DELEGATE JORDAN: Yes, Mr. Chairman. No, I will speak last. I was --

PRESIDENT CASSELL: Discussion on that motion?

All right, Delegate Mason.

DELEGATE C. MASON: I think I understand the intent, but I think it makes sense to note another discrepancy. To remove or retain an elected state or local government official, it should be only the voters of that particular local area. So if the amendment proposed by Delegate Jordan is adopted, it seems to me there has to be a further amendment to identify what voters we're talking about. It wouldn't be the voters of the state in the case of a local official.

PRESIDENT CASSELL: Delegate Jordan?

DELEGATE JORDAN: I understand the point. I think, though, to be consistent with the language in suffrage, it says a person who is eligible to vote resides or is domiciled in the state, I think here the reference to state only indicates that you must be a fully qualified voter of the state before you can do anything. We don't have the qualified voters in local government and not qualified voters of the state.

The point I am trying to make here is that these provisions need to be applied to local government officials. I can't speak to the section, but that is the intent of my motion, to see that the recall provisions that we establish in the constitution are applicable to all elected officials in the state.

PRESIDENT CASSELL: Delegate Moore.

DELEGATE B. MOORE: Do you mean this recall that would be applicable to local public officials, do you mean it can be applicable or must be applicable?

DELEGATE JORDAN: I think it must be applicable. I don't see why you think it is mandatory for state officials and don't put the same responsibility on local government officials. It says it is a process by which the qualified voters of the State of _____ may remove or retain an elected state official. I am saying why should that process, if it is going to be fair, should treat local elected officials any differently?

DELEGATE B. MOORE: I think your amendment does not really state this would have to be applied to local entities. I would be in favor of the amendment because it basically defines or includes local governments if they want to, but it doesn't say-- So when we come to the section where it says whether the local entities will have to do it or not, we can argue it there. But I would support your amendment here, just for clarification, but just for the record I don't think it mandates any --

PRESIDENT CASSELL: All right. Is there further discussion on the motion?

DELEGATE GARNER: Call the question.

PRESIDENT CASSELL: The question has been called. Those in favor of cutting off debate, signify by saying aye.

[Chorus of ayes.] Opposed? Abstained. Okay.

The question has been called on the amendment by Delegate Jordan which would add after the word "state" on line 6, "or local government official".

Those in favor of that amended motion signify by saying aye. (Chorus of ayes.) Those opposed? (Chorus of nays.) Abstain? The ayes have it and it is so changed.

All right, let's have hands on that. Those in favor of Delegate Jordan's motion signify by raising your hands. (Show of hands.)

DELEGATE COOPER: Eleven.

PRESIDENT CASSELL: Those opposed? (Show of hands.)

DELEGATE COOPER: Ten.

PRESIDENT CASSELL: It is 11-10-1. The motion carries.

DELEGATE CORN: Is there a quorum?

PRESIDENT CASSELL: Delegate Johnson.

DELEGATE GARNER: Call the question on the full section.

PRESIDENT CASSELL: The question has been called on the full section.

DELEGATE GRAHAM: I still would like to ask the members of this convention a question, because it seems to me that we are dealing right here on lines 5 and 6 with the definition, and it is a definition we have worked out and done research on. I am skeptical of adding other words to change that. If so, I am wondering if it still has the same meaning throughout the United States.

I would like for somebody to answer that.

PRESIDENT CASSELL: I don't know. You're asking for information regarding the motion that is on the floor?

DELEGATE JORDAN: The motion passed. As I understand it, the motion has passed and is no longer debatable.

PRESIDENT CASSELL: I don't think she's debating; just asking for clarification.

Delegate Mason.

DELEGATE C. MASON: I would like to offer a conforming amendment. Simply strike the words "of the State of _____", so that it reads "Recall is a process by which the qualified voters may remove or retain an elected state or local government official."

PRESIDENT CASSELL: I think you're out of order --

DELEGATE C. MASON: It avoids the issue of whether the voters of all the state have to vote on the recall or

—
purely local --

PRESIDENT CASSELL: I understand what you're doing, but you are offering --

DELEGATE C. MASON: It's just a conforming amendment. It is not a substantive amendment.

PRESIDENT CASSELL: Well, an amendment is an amendment. The motion is passed now. You can't have a conforming amendment to something that is passed.

DELEGATE GARNER: We only adopted the Jordan amendment. We have not yet adopted the section. The section was still on the floor. Delegate Mason I believe appropriately moved an amendment to that.

PRESIDENT CASSELL: Okay, very good.

Would you restate that?

DELEGATE C. MASON: I move to strike "of the State of _____".

PRESIDENT CASSELL: So it reads "Recall is a process by which the qualified voters may remove or retain an elected state or local government official."

DELEGATE GARNER: Call the question.

PRESIDENT CASSELL: All right. Let's vote on that.

Those in favor of the amended motion, that is, the qualifying motion that just passed, please signify by saying

aye. (Chorus of ayes.) Opposed? Abstain.

DELEGATE GARNER: Call the question on the full section 1.

PRESIDENT CASSELL: All right. Those in favor of the full section, as amended, please signify by saying aye. (Chorus of ayes.) Opposed? Abstained? Okay.

DELEGATE JOHNSON: Move the adoption of section 2, the Petition Process and Time Limits.

PRESIDENT CASSELL: Second?

A DELEGATE: Second.

PRESIDENT CASSELL: Okay. It has been moved and seconded that section 2 be approved.

Delegate Nahikian.

DELEGATE NAHIKIAN: Mr. Chairman, I would like to offer an amendment.

On line 14, I would like to change the period to a semi colon to indicate that a maximum of 120 days is allotted for the collection of signatures in a state-wide office, and I would say a maximum of 90 days is allotted in a local or legislative district office.

PRESIDENT CASSELL: Do you want to state that one more time for the secretary?

DELEGATE NAHIKIAN: My amendment would read "A maxi-

mum of 90 days is allotted for the collection of signatures in any local office--local or legislative office--local office or legislative district--" we'll do it that way. Semi colon, "A maximum of 120 days is allotted for the collection of signatures in the case of a state-wide office."

A DELEGATE: Second.

PRESIDENT CASSELL: All right. Delegate Thomas.

DELEGATE THOMAS: Mr. President, I would like to speak against that motion. I think it should be uniform across the board. I have a problem with the 120 days for state-wide elections. I don't think we should put that in.

PRESIDENT CASSELL: Any other discussion on the amendment? Delegate Rothschild?

DELEGATE ROTHSCCHILD: I would just like a clarification from the maker of the motion.

What happens if we have at-large candidates? Is that a legislative district or a sub-part of the entire state?

DELEGATE NAHIKIAN: The amendment as I have offered it, 90 days would apply, as the committee recommended, to a local legislative district or to a local government officer.

The extension to 120 days would apply only if it were a state-wide office for which all the voters of the state vote--like governor.

DELEGATE ROTHSCHILD: Or an at-large candidate for the legislature, if we have such?

DELEGATE NAHIKIAN: If we should have such, but I don't anticipate our having such.

PRESIDENT CASSELL: Is there further discussion on the amendment? Are you ready to vote?

Mr. Love.

DELEGATE LOVE: Mr. Chairman, I would like to offer a substitute amendment.

I think the maximum of 180 days allotted for the collection of signatures, period.

PRESIDENT CASSELL: That's a substitute for the amendment proposed by Nahikian?

DELEGATE LOVE: Yes. It would give everybody the same. It is for U.S. Senators and Congressmen, and I think it should be consistent across the board for all officials.

PRESIDENT CASSELL: Is our counsel here tonight?

Let me ask if any of our attorneys can clarify whether -- Well, first of all, is there a second to the motion?

A DELEGATE: Second.

PRESIDENT CASSELL: Can any of our attorneys here clarify whether the state can recall a Senator or Representative?

DELEGATE GARNER: My field is the higher authority of political science (laughter). You may not recall Senators or Congressmen. The Senators are elected by state legislatures. The state legislature could not recall Senators. It just cannot be done. It has never been done.

PRESIDENT CASSELL: Sounds logical.

Delegate Schrag? Do you agree?

DELEGATE SCHRAG: I have no knowledge of the subject. I defer to Delegate Garner's expertise.

PRESIDENT CASSELL: Okay. Please read Delegate Love's substitution.

DELEGATE COOPER: Delegate Love's substitute, and it was seconded, would substitute 130 days for 90 days, and the rest of the sentence would remain as originally proposed by the committee.

DELEGATE CORN: Are there amendments to the --

PRESIDENT CASSELL: I hope we can deal with that. We have a substitute to an amendment. I wouldn't want to amend that now. Let's deal with that and vote it up or down.

Discussion?

DELEGATE JOHNSON: What are we voting on?

PRESIDENT CASSELL: I'm sorry, I can't hear you.

DELEGATE JOHNSON: What are we voting on?

PRESIDENT CASSELL: We are voting on Love's amendment.

DELEGATE JOHNSON: Oh, I had something to say on that motion.

I just want to remind the delegates, as you're voting, that we are talking about recall of an elected official. One of the reasons that we tried to make this 90 days, which Delegate Nahikian has pointed out, it seems like a relatively short amount of time, is because you don't want to drag something like this out.

If an elected official has done something so devastating to be recalled, believe me, our rationale on the committee was that it shouldn't take forever and a day, like 180 days, to collect signatures to have that issued placed on the ballot. So I urge you to vote against this amendment for those reasons.

PRESIDENT CASSELL: Delegate Nahikian.

DELEGATE NAHIKIAN: I would like to speak against the Love amendment which extends the time categorically across the board for 180 days. That's six months, and I think 180 days is too long.

The rationale for my earlier amendment was to leave the 90 days as the committee recommended, but my general

feeling is that extending the time from 120 days for a state-wide office balances off against the very restrictive percentage that is contained in section 4. I just thought all right, if we're going to go with the committee's recommendation for 25 percent of the voters, which is high, then the least we can do for a state-wide office is have it at 120.

But I am opposed to the 180 days. I think that is much too long. That's longer than most political campaigns.

PRESIDENT CASSELL: Delegate Love's motion is to substitute 180 days. Those in favor of that motion signify by saying aye. (Chorus of ayes.) Those opposed. (Chorus of nays.) Abstained? The motion loses.

We are now back to Delegate Nahikian's motion to provide for 120 days in the case of a state-wide office. Is that motion clear?

Those in favor --

DELEGATE CORN: Mr. President, point of order.

PRESIDENT CASSELL: I am not going to entertain any more disruption now. It is time to move on. Is this a real point of order?

DELEGATE CORN: Yes. We could have amendments to her --

PRESIDENT CASSELL: You were out of the room. We

were about to vote. You rushed back in to throw in an amendment. I want to vote.

DELEGATE CORN: Please, I want to have an amendment to her's.

A DELEGATE: That's not a point of order, Mr. Chairman.

DELEGATE CORN: Under Roberts Rules you certainly may have a point of order. You may have an amendment to a substitute motion. That's the point of order.

PRESIDENT CASSELL: But that is not a point of order. That is not a point of order.

Delegate Corn, let me see if -- I don't want to be ruling you out of order and fighting. I would just like to have some peace and harmony.

Is what you're talking about really all that -- I mean, is it going to be voted down?

DELEGATE CORN: I hope not, because I think it's important

(Simultaneous voices shouting.)

PRESIDENT CASSELL: I am talking to Delegate Corn. I would like you to keep quiet until I have finished my conversations with one person --

DELEGATE LOVE: You are out of order, Mr. Chairman.

PRESIDENT CASSELL: I am saying you're out of order.
Please sit down.

DELEGATE LOVE: You have no --

PRESIDENT CASSELL: I am speaking to Delegate Corn.
I want you to be quiet until I have finished.

Okay, Delegate Corn.

DELEGATE CORN: I think my amendment has great
validity.

PRESIDENT CASSELL: It has great validity. Please
make your amendment.

DELEGATE CORN: After the words "in any local office
or legislative district", I would add the words "for any term
of office that is four years or longer."

The point of that is, if somebody is elected for
a two-year term --

A DELEGATE: There is no second.

DELEGATE CORN: Would you call for a second?

PRESIDENT CASSELL: Is there a second to that motion?
(No response.) Okay, the motion dies for lack of a second.

DELEGATE CORN: They're elected for two years --

PRESIDENT CASSELL: Please, you're out of order.

Back to Delegate Nahikian's motion. Those in favor
of Delegate Nahikian's motion, which extends the time of 120

days for a state-wide office, please signify by saying aye.
(Chorus of ayes.) Opposed? (Chorus of nays.)

Those who are in favor of that motion please signify
by raising your hand. (Show of hands.)

DELEGATE COOPER: Ten.

PRESIDENT CASSELL: Opposed? (Show of hands.)

DELEGATE COOPER: Fifteen.

PRESIDENT CASSELL: Abstain? Then the motion loses.

We are back to the original motion, and that is for
the adoption of section 2. Those in favor of the adoption of
section 2 as amended, will you signify by saying aye. (Chorus
of ayes.) Opposed? (Chorus of nays.) Abstain?

Show of hands, please. Those in favor of section
2 as amended.

DELEGATE CORN: It's unamended.

PRESIDENT CASSELL: That's true. There were no
amendments. 2 as read. (Show of hands.)

DELEGATE COOPER: Seventeen.

PRESIDENT CASSELL: Opposed? (Show of hands.)

DELEGATE COOPER: Three.

PRESIDENT CASSELL: Abstained? The motion carries
and section 2 is adopted.

DELEGATE JOHNSON: Move the adoption of section 3,

the petition statement.

PRESIDENT CASSELL: Is there a second?

DELEGATE GRAHAM: Second.

PRESIDENT CASSELL: It has been moved and seconded for the adoption of section 3, the petition statement.

Discussion? Delegate Coates.

DELEGATE COATES: I move to amend section 3 as follows: I would insert at the end semicolon, the following language --

PRESIDENT CASSELL: Could you state what line?

DELEGATE COATES: Line 19. Strike the period and insert semicolon and the following language: "unless the Secretary of State is the subject of recall, whereupon the legislature will appoint a special recall prosecutor."

PRESIDENT CASSELL: Is there a second?

DELEGATE CORN: Second.

PRESIDENT CASSELL: Please read that, Mr. Secretary.

DELEGATE COOPER: The amendment set forth would amend line 19, to strike the period and insert a semicolon: "unless the Secretary of State is the subject of recall, whereupon the legislature will appoint a special recall prosecutor."

PRESIDENT CASSELL: Discussion? Would you care to

—
speak on that?

DELEGATE COATES: I am troubled by the word "prosecutor" and hope that the wisdom of my fellow delegates can provide a more appropriate --

PRESIDENT CASSELL: It was your word but you seek a better word?

DELEGATE COATES: Yes, I do. But the intent of such amendment is to avoid the conflict that is obvious, since the Secretary of State himself --

PRESIDENT CASSELL: How about "recall administrator"?

DELEGATE COATES: Yes.

DELEGATE GARNER: I am very much in support of the idea behind Delegate Coates' motion and would suggest a substitute which he may wish to adopt, which would be just to remove the words "Secretary of State" and place in there "Attorney General".

We used Attorney General earlier in the initiative and referendum section. The Attorney General, under the articles we have adopted, is appointed and will never be elected. Therefore, I think that will solve our problem.

I would ask him to accept that as his motion.

DELEGATE COATES: That achieves the sense of my amendment, Mr. Chairman.

PRESIDENT CASSELL: Without objection, that motion is so adjusted.

Discussion on the motion by Delegate Coates?
All right. Are you ready for the vote? Those in favor --

DELEGATE ROTHCHILD: A point of clarification.
What is the Attorney General's involvement?

PRESIDENT CASSELL: The Attorney General is that individual who shall be the administrator of the recall process if the Secretary of State is the subject of recall.

Those in favor of Delegate Coates' amendment, signify by saying aye. (Chorus of ayes.) Opposed? (One no.) Abstained? Okay.

Are there other amendments to section 3?

DELEGATE CORN: I don't know how to phrase this, but maybe somebody else does. It bothers me that you just have "alleging the reasons for recall", and I'll tell you why it bothers me --

PRESIDENT CASSELL: Excuse me. What was it that bothers you?

DELEGATE NAHIKIAN: Do you have an amendment?

DELEGATE CORN: I would like somebody else to word the amendment, but let me give you my problem. This is on line 17, alleging the reasons for recall --

DELEGATE NAHIKIAN: Mr. Chairman, point of order.

PRESIDENT CASSELL: State your point of order.

DELEGATE NAHIKIAN: The delegate does not have an amendment to offer, and I suggest we move on. If the delegate has an amendment to offer, that we can then do it.

PRESIDENT CASSELL: I think the point is well taken. There was no motion made.

Why don't you get that together, Delegate Corn.

Are there any further amendments? There being --

DELEGATE CORN: Could you give us a five-minute break then --

PRESIDENT CASSELL: No.

DELEGATE CORN: Or a three-minute break?

PRESIDENT CASSELL: No, I don't think we're going to stop now. I mean, if it's substantive, you can get it together in time.

DELEGATE CORN: I do -- okay.

Alleging fraud as a reason for recall.

PRESIDENT CASSELL: What is your amendment?

DELEGATE CORN: Line 17, it would read "A concise statement alleging fraud as the reason for recall.

DELEGATE KAMENY: There may be a couple of other reasons.

PRESIDENT CASSELL: Do you mean that fraud shall be the only reason for recall? Is there a second to that?

There being no second, the amendment dies.

DELEGATE LOVE: Point of order.

PRESIDENT CASSELL: Yes.

DELEGATE LOVE: Mr. Chairman, I would just like to ask the committee on a point of clarification. The term "in cooperation with" seems a little loose to me.

Just for the record, is that the same kind of process that you spoke about earlier when the wording and so forth had to be gotten down with the Secretary of State, or is this something else? If so, I think it should be clear for the record because it is possible, if the Attorney General disagrees with the petitioners, then they could not cooperate. Who would take precedence? We need a definition for the record.

PRESIDENT CASSELL: A member of the committee?

DELEGATE GARNER: The intent is that the state official's role will be one of form and style and not of substance. The concern is to get it on to the petition so it fits properly and not whether or not the statements are true or in any way valid. That is the intent of the role of the state official involved.

On the petition, we discussed placing it on the ballot and decided we didn't want to frame 100,000 copies of allegations. Just on the petition.

PRESIDENT CASSELL; Delegate Eichhorn.

DELEGATE EICHHORN: Are you allowing the petitioners to state the allegations for recall? You are not allowing the elected officials to be biased, on the petition.

DELEGATE B. MOORE: The petition will have the pros and cons. The ballot will just have whether he should be recalled, period, or she.

DELEGATE KAMENY; No. There is nothing on this about the pros. Just the cons.

DELEGATE GARNER; This article, as it begins, is a statement about enabling legislation and what shall be stated on the ballot. It was our assumption that the statement would be in the form of "shall official acts be recalled, yes or no, period." No reason would be stated.

The concern is what would the petition look like and how is that created. That is what this section pertains to.

DELEGATE KAMENY; Which means there is not a pro and a con.

PRESIDENT CASSELL; All right. We're back to the